EDMUND G. BROWN JR. Attorney General of California 2 LINDA K. SCHNEIDER Supervising Deputy Attorney General 3 MARICHELLE S. TAHIMIC Deputy Attorney General State Bar No. 147392 110 West "A" Street, Suite 1100 5 San Diego, CA 92101 P.O. Box 85266 6 San Diego, CA 92186-5266 Telephone: (619) 645-3154 7 Facsimile: (619) 645-2061 Attorneys for Complainant 8 **BEFORE THE** 9 **BOARD OF REGISTERED NURSING** DEPARTMENT OF CONSUMER AFFAIRS 10 STATE OF CALIFORNIA 11 Case No. 2010-31 In the Matter of the Accusation Against: 12 DOROTHY ELAINE-PAGE COKER 13 3688 First Avenue #23 ACCUSATION San Diego, CA 92103 14 15 Registered Nurse License No. 656221 16 Respondent. 17 18 Complainant alleges: 19 **PARTIES** 20 1. Heidi Goodman (Complainant) brings this Accusation solely in her official capacity 21 as the Assistant Executive Officer of the Board of Registered Nursing, Department of Consumer 22 Affairs. 23 On or about April 14, 2005, the Board of Registered Nursing issued Registered Nurse 24 license number 656221 to Dorothy Elaine-Page Coker (Respondent). The Registered Nurse 25 license was in full force and effect at all times relevant to the charges brought herein and will 26 expire on January 31, 2011, unless renewed. 27 111 28 111 1

JURISDICTION

- 3. This Accusation is brought before the Board of Registered Nursing (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.
- 4. Section 2750 of the Business and Professions Code ("Code") provides, in pertinent part, that the Board may discipline any licensee, including a licensee holding a temporary or an inactive license, for any reason provided in Article 3 (commencing with section 2750) of the Nursing Practice Act.
- 5. Section 2764 of the Code provides, in pertinent part, that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or to render a decision imposing discipline on the license.
- 6. Section 118, subdivision (b), of the Code provides that the suspension, expiration, surrender or cancellation of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated.

STATUTORY PROVISIONS AND REGULATIONS

7. Section 2761 of the Code states:

The board may take disciplinary action against a certified or licensed nurse or deny an application for a certificate or license for any of the following:

- (a) Unprofessional conduct, which includes, but is not limited to, the following:
- (f) Conviction of a felony or of any offense substantially related to the qualifications, functions, and duties of a registered nurse, in which event the record of the conviction shall be conclusive evidence thereof.
- 8. Section 2762 of the Code states:

In addition to other acts constituting unprofessional conduct within the meaning of this chapter [the Nursing Practice Act], it is unprofessional conduct for a person licensed under this chapter to do any of the following:

(a) Obtain or possess in violation of law, or prescribe, or except as directed by a licensed physician and surgeon, dentist, or podiatrist administer to himself or

herself, or furnish or administer to another, any controlled substance as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code or any dangerous drug or dangerous device as defined in Section 4022.

- (b) Use any controlled substance as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code, or any dangerous drug or dangerous device as defined in Section 4022, or alcoholic beverages, to an extent or in a manner dangerous or injurious to himself or herself, any other person, or the public or to the extent that such use impairs his or her ability to conduct with safety to the public the practice authorized by his or her license.
- (c) Be convicted of a criminal offense involving the prescription, consumption, or self-administration of any of the substances described in subdivisions (a) and (b) of this section, or the possession of, or falsification of a record pertaining to, the substances described in subdivision (a) of this section, in which event the record of the conviction is conclusive evidence thereof.

9. Section 2765 provides:

"A plea or verdict of guilty or a conviction following a plea of nolo contendere made to a charge substantially related to the qualifications, functions and duties of a registered nurse is deemed to be a conviction within the meaning of this article...."

10. Section 490 of the Code provides, in pertinent part, that a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.

11. California Code of Regulations, title 16, section 1444, states:

A conviction or act shall be considered to be substantially related to the qualifications, functions or duties of a registered nurse if to a substantial degree it evidences the present or potential unfitness of a registered nurse to practice in a manner consistent with the public health, safety, or welfare....

12. Section 492 of the Code states:

Notwithstanding any other provision of law, successful completion of any diversion program under the Penal Code, or successful completion of an alcohol and drug problem assessment program under Article 5 (commencing with section 23249.50) of Chapter 12 of Division 11 of the Vehicle Code, shall not prohibit any agency established under Division 2 ([Healing Arts] commencing with Section 500) of this code, or any initiative act referred to in that division, from taking disciplinary action against a licensee or from denying a license for professional misconduct, notwithstanding that evidence of that misconduct may be recorded in a record pertaining to an arrest.

This section shall not be construed to apply to any drug diversion program operated by any agency established under Division 2 (commencing with Section 500) of this code, or any initiative act referred to in that division.

Section 493 of the Code states:

Notwithstanding any other provision of law, in a proceeding conducted by a board within the department pursuant to law to deny an application for a license or to suspend or revoke a license or otherwise take disciplinary action against a person who holds a license, upon the ground that the applicant or the licensee has been convicted of a crime substantially related to the qualifications, functions, and duties of the licensee in question, the record of conviction of the crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact, and the board may inquire into the circumstances surrounding the commission of the crime in order to fix the degree of discipline or to determine if the conviction is substantially related to the qualifications, functions, and duties of the licensee in question.

As used in this section, 'license' includes 'certificate,' 'permit,' 'authority,' and 'registration.'

14. Section 482 of the Code states:

Each board under the provisions of this code shall develop criteria to evaluate the rehabilitation of a person when:

- (a) Considering the denial of a license by the board under Section 480; or
- (b) Considering suspension or revocation of a license under Section 490.

Each board shall take into account all competent evidence of rehabilitation furnished by the applicant or licensee.

- 15. Title 16, California Code of Regulations section 1445, subdivision (b), provides the following criteria for evaluating the rehabilitation of a licensee as follows:
 - (b) When considering the suspension or revocation of a license on the grounds that a registered nurse has been convicted of a crime, the Board, in evaluating the rehabilitation of such person and his/her eligibility for a license will consider the following criteria:
 - (1) Nature and severity of the act(s) or offense(s).
 - (2) Total criminal record.
 - (3) The time that has elapsed since commission of the act(s) or offense(s).
 - (4) Whether the licensee has complied with any terms of parole, probation, restitution or any other sanctions lawfully imposed against the licensee.
 - (5) If applicable, evidence of expungement proceedings pursuant to Section 1203.4 of the Penal Code.
 - (6) Evidence, if any, of rehabilitation submitted by the licensee.

COST RECOVERY

16. Section 125.3 of the Code provides, in pertinent part, that the Board may request the administrative law judge to direct a licentiate found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

DRUGS

17. Cocaine is a Schedule II controlled substance as designated by Health and Safety Code section 11055(b)(6), and is a dangerous drug pursuant to Business & Professions Code section 4022.

FIRST CAUSE FOR DISCIPLINE

(November 14, 2008 Conviction for DUI on October 12, 2008)

- 18. Respondent is subject to disciplinary action under Code sections 490, 2761(f) and 2762(c) for conviction of a crime that is substantially related to her qualifications, functions and duties as a registered nurse in that in *People v. Dorothy Elaine Coker*, San Diego Superior Court, Central District, Case No. CD216866, Respondent was convicted on her guilty plea of violating Vehicle Code section 23152(a), driving under the influence of alcohol, a misdemeanor.
- 19. The circumstances that led to this conviction are that on October 12, 2008, two uniformed San Diego Police Officers were parked in a marked black and white San Diego Police vehicle and were monitoring a 4-way intersection in the city of San Diego for purposes of traffic enforcement. At about 12:45 a.m., Officer K. observed a vehicle that failed to stop at the limit line but instead proceeded through the intersection at 10-15 mph. The officers made a traffic stop and approached Respondent, the driver of the vehicle. After making contact with Respondent, Officer K. smelled the odor of an alcoholic beverage on Respondent's breath. Respondent's eyes were bloodshot, watery, droopy, red and glassy. Respondent admitted she drank 1 beer and 2 mixed drinks that evening. Respondent agreed to participate in field sobriety tests and staggered to the left and right while walking to a flat surface. The officer conducted field sobriety tests, which Respondent could not perform successfully. As a result, Respondent was arrested. When asked, Respondent denied having anything illegal on her. A pat down of Respondent's outer

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clothing revealed no contraband. She was placed in the patrol vehicle and transported to San Diego Police headquarters.

- 20. At police headquarters, Respondent elected to submit to a blood test instead of a breath test. After the blood draw was completed, Respondent was escorted to a work table in the booking area where Officer K. began to take inventory of the contents of Respondent's purse to complete the paperwork for booking Respondent. The officer found a black plastic container with a snap-close lid inside Respondent's purse. Inside the container, the officer found a blue plastic baggie with a white powdery substance, two cut plastic straws and an unsealed envelope. The unsealed envelope contained three more blue plastic baggies of a white powdery substance. Respondent immediately said, "That's not mine!" The officer also found \$280 in \$20 denominations. Officer K. tested the white powdery substance, which tested positive for a cocaine-based narcotic. In all, 2.80 grams of cocaine was found in Respondent's possession.
- 21. While seated at the booking table, Respondent admitted she used narcotics in the past and that she bought the cocaine found in her purse from H.M. for \$150. Respondent admitted to using cocaine for the three months prior to her arrest, having started using cocaine at a party with friends. Respondent further admitted she did not want to use cocaine on a regular basis but enjoyed the feeling cocaine gave her.
- 22. Respondent was charged with 1) possession of a controlled substance, cocaine, in violation of Health and Safety Code section 11350(a), a felony; and, 2) driving under the influence of alcohol and a drug, in violation of Vehicle Code section 23152(a), a misdemeanor.
- 23. As a result of Respondent's guilty plea to both charges on November 14, 2008, judgment on Count 1 (possession) was deferred for 18 months under Penal Code Section 1000, et seq., and Respondent was required to complete a deferred entry of judgment treatment program. As to Count 2 (DUI), Respondent was sentenced to summary probation for 5 years, required to pay fines and fees of \$2,197, required to perform community service for 10 days and ordered to enroll in and complete a first conviction program for 3 months.

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SECOND CAUSE FOR DISCIPLINE

(Unprofessional Conduct-Use of Alcoholic Beverage)

24. Respondent is subject to disciplinary action under Code sections 2761(a) and 2762(b) for unprofessional conduct in that on October 12, 2008, Respondent used alcoholic beverages to an extent or in a manner dangerous or injurious to herself or the public, as more fully set forth in paragraphs 19-23, above.

THIRD CAUSE FOR DISCIPLINE

(Unprofessional Conduct-Possession of Controlled Substance)

25. Respondent is subject to disciplinary action under Code sections 2761(a) and 2762(a) in that on October 12, 2008, Respondent unlawfully possessed cocaine, a controlled substance and dangerous drug, as more fully set forth in paragraphs 19-23, above.

PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board of Registered Nursing issue a decision:

- 1. Revoking or suspending Registered Nurse Number 656221, issued to Dorothy Elaine-Page Coker Dorothy Elaine-Page Coker.
- Ordering Dorothy Elaine-Page Coker to pay the Board of Registered Nursing the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;
 - 3. Taking such other and further action as deemed necessary and proper.

DATED: 7/20/09 Deide Hodinar

Assistant Executive Officer
Board of Registered Nursing
Department of Consumer Affairs
State of California

State of California Complainant

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